

**35<sup>th</sup> MEETING**  
**OF THE**  
**MARYLAND HEALTH CARE COMMISSION**

**Friday, June 21, 2002**  
**Minutes**

Chairman Wilson called the meeting to order at 1:03 p.m.

Commissioners present: Alcoreza, Beasley, Chase, Crofoot, Etheredge, Malouf, Row, and Zanger

**ITEM 1.**

**Approval of Minutes**

Commissioner Ernest B. Crofoot made a motion to approve the Minutes of the May meeting of the Commission, which was seconded by Commissioner Evelyn T. Beasley, and unanimously approved.

**ITEM 2.**

**Update on Commission Activities**

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Ben Steffen, Deputy Director of Data Systems and Analysis, announced that data collection for the \_\_\_\_ would begin soon under the Commission's contract with \_\_\_\_, following approval of the contract by the Board of Public Works. For the status of other activities, he referred the Commissioners to the written *Update of Activities*.

Pamela Barclay, Deputy Director of Health Resources, referred the Commissioners to the Health Resources section of the *Update of Activities*.

Enrique Martinez-Vidal, Deputy Director of Performance and Benefits, also referred the Commissioners to the written *Update of Activities*. Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

**ITEM 3.**

**PROPOSED ACTION:** COMAR 10.25.11, Institutional Review Board

Chairman Wilson said that the next agenda item would be consideration of a proposed modification of the Institutional Review Board regulations. Joel Tornari, Assistant Attorney General for the Commission, explained that the purpose of this proposed action is to expand those data requests subject to Institutional Review Board (IRB) review to include requests for sensitive data elements from all other Commission data bases as well. The proposed regulation also amends the list of sensitive data elements subject to IRB review to include all sensitive data elements held by the Commission that meet the definition of "sensitive data

element” in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Following discussion among the Commissioners regarding the Commission’s right to review all decisions made by the IRB, Vice Chairman George Malouf made a motion to approve the proposed modification to the regulations, which was seconded by Commissioner Walter E. Chase, Sr., and unanimously approved.

**ACTION: COMAR 10.25.11 — PROPOSED PERMANENT REGULATION — Institutional Review Board is hereby RELEASED FOR PUBLIC COMMENT.**

#### **ITEM 4.**

**ACTION: INSTITUTIONAL REVIEW BOARD (IRB) —** Consideration of IRB Recommendations on Release of Medical Care Data

Chairman Wilson asked Mr. Tornari and Mr. Steffen to present information regarding the next agenda item. Mr. Steffen said that the IRB met via a conference call in May to review a request for DC hospital data by Cohen, Rutherford, Blum + Knight, PC. The IRB did not approve the initial application because the request did not describe the purpose for which the data were needed. A subsequent request from Cohen, Rutherford, Blum + Knight, PC described a specific purpose for the data. That request was reviewed and approved by the IRB on June 17th, subject to three limitations: (1) that the use of the data would be limited to the purpose set forth in the request; (2) that physician ID’s are re-encrypted prior to the release of the data; and (3) that the MHCC would calculate age for patients with a missing age, thereby eliminating the need to release any birth dates. Commissioner Constance Row made a motion to approve the decision of the IRB, which was seconded by Commissioner Crofoot, and unanimously approved.

**ACTION: The Data Request from Cohen, Rutherford, Blum + Knight, PC is hereby APPROVED unanimously.**

#### **ITEM 5.**

**ACTION – CERTIFICATE OF NEED (CON) Applications:**

- Merger Consolidation of Haven Nursing Home and Kenesaw Nursing Home, and Haven Nursing Home, Docket No. 01-24-2086
- Lorien Life Center – Harford County, Docket No. 01-12-2085

Chairman Wilson announced that Susan Panek, Chief, Certificate of Need, assisted by staff analyst for each case, would present two CON applications for action. Ms. Panek said that Haven Nursing Home, an existing comprehensive care facility located in Baltimore City, was seeking CON approval to construct an 80-bed replacement facility on its current site. The new construction will replace Haven’s existing building that now houses 24 licensed nursing home beds. The additional beds for the new facility will be relocated from Kenesaw Nursing Home (27 licensed beds) and the former Key Circle Hospice (29 temporarily delicensed beds acquired by Haven from the Johns Hopkins Health System). This request involved two inter-related actions by the Commission. First, Haven requested an exemption from CON review for the merger/consolidation of Haven Nursing Home and Kenesaw Nursing Home and relocation of Kenesaw’s 27 beds to the new facility. Staff recommended that the Commission approve the merger through corporate restructuring of Haven and Kenesaw Nursing homes. Ms. Panek introduced Haven Nursing Home’s administrator, Vinita Baxter and their counsel, Nancy Gregor. Vice Chairman Malouf made a motion that the Commission approve the exemption from CON review for the merger/consolidation, which was seconded by Commissioner Crofoot, and unanimously approved.

**ACTION: Exemption from CON Review for the merger/consolidation of Haven Nursing Home and Kenesaw Nursing Home is hereby APPROVED unanimously.**

Ms. Panek said that Haven was also seeking CON approval for the capital expenditure involved in developing the replacement facility, as well as the relocation of the temporarily delicensed beds from Key Circle Hospice to the new facility. The total estimated cost of the proposed project is \$4,157,000, consisting of \$3,880,000 in capital costs, \$177,000 in financing and other cash requirements, and \$100,000 in working capacity and startup costs. Staff recommended that the Commission approve the CON proposal to build an 80-bed replacement Haven Nursing Home. Commissioner Row made a motion that the Commission approve the CON, which was seconded by Commissioner Lenys Alcoreza, and unanimously approved.

**ACTION: Haven Nursing Home, Docket No. 01-24-2086, proposal to build an 80-bed replacement facility is hereby APPROVED unanimously.**

Chairman Wilson announced that the next item on the agenda was an application from Lorien Life Center – Harford County to add 22 comprehensive care beds to its previously approved 40-bed project under construction in Bel Air, Harford County, Maryland. Rhoda Wolfe-Carr, staff analyst on the project, presented a summary description of the proposal. She said that staff recommended approval of the CON because occupancy trends in Harford County over the last six years warrant approval; the applicant is the only entity interested in obtaining approval for the 22 comprehensive care beds, and the applicant provides a good model for the provision of long term care services. Ms. Wolfe-Carr introduced Mr. Lou Grimm, President, and John Mangione, construction manager, for Lorien Life Center, and James Forsythe, counsel to Lorien Life Center. Vice Chairman Malouf made a motion to approve the CON. Commissioner Crofoot asked about the nursing home’s performance regarding patient care. Ms. Wolfe-Carr said that no deficiencies regarding performance had been reported to the Office of Health Care Quality as of June 14, 2002. The facility had one minor deficiency, which had been corrected. Commissioner Crofoot made a motion to table the agenda item. The Motion to Table failed for lack of a second. Commissioner Row seconded Vice Chairman Malouf’s motion to approve the CON. Commissioners Alcoreza, Beasley, Chase, Etheredge, Malouf, Row, and Zanger voted to approve the CON. Commissioner Crofoot voted against approval of the CON.

**ACTION: Lorien Life Center – Harford County, Docket No. 01-12-2085, is hereby APPROVED.**

## **ITEM 6.**

**PRESENTATION:** Update on Small Group Market

- Survey of Carrier Experience, Calendar Year 2001
- Small Group Audit Results and Potential Penalties for Misreporting

Chairman Wilson announced that the next agenda item was the beginning of the Commission’s annual review of the Comprehensive Standard Health Benefit Plan (CSHBP) with the report on the financial survey of carriers. Mr. Martinez-Vidal presented the findings of the survey. He thanked Jerry Petrik and Janet Ennis for their hard work on this report. Premium rates have exceeded average salary rates for the fourth consecutive year. The CSHBP premium is within the affordability cap by either the “old method” (calculated by including riders to the basic coverage) or the “new method” (calculated without riders). For the second consecutive year, riders constitute a substantial part of premium (18.74%) particularly for PPO (Preferred Provider Organizations) and POS (Point of Service) plans. Increases in CSHBP premium (11.78%) are comparable to premium increases in both small and large group markets elsewhere. This year’s survey information shows a decline in the number of covered lives (2.76%) and in the number of

employer groups participating (2.24%). Concentration of carriers is continuing, however, a choice of carriers remains available this year.

Bruce Kangisser of William M. Mercer, Inc. (Mercer), the Commission's auditor, reported the findings of the independent audit of major carriers in the market. Mr. Kangisser reported that Mercer audited data from Aetna US HealthCare, CareFirst Blue Cross Blue Shield, and MAMSI-OCI. All three carriers had problems with data, though those problems did not relate to issues that the Commission bases decision-making upon. Aetna's data problems related to the estimate for member months, which effects an actuarial analysis, but not coverage decisions. CareFirst's over count of the number of participating groups related only to a sub-segment of its business. Mercer looked at the revenue, claims, and expenses related to MAMSI's PPO product that seemed inconsistent. MAMSI revised its expense assumptions and changed the numbers to give a more accurate estimate on its PPO expenses and is now in line with the 2000 results.

Mr. Tornari reviewed the Commission's authority to redress failure to report, or misreporting, to the Commission and its ability to impose fines on carriers. He reported that, in July, staff would present proposed regulations for the Commission's consideration regarding notice, appeals, and guidelines for the imposition of fines. Monies collected from the imposition of fines are deposited into the state's general fund, not to the MHCC. Mr. Martinez-Vidal added that the Commission's carrier audit would be expanded next year. Chairman Wilson thanked Mr. Martinez-Vidal, Mr. Kangisser, and Mr. Tornari for their reports. The report, *Maryland's Small Group Health Insurance Market, Summary of Carrier Experience, For the Calendar Year Ended December 31, 2001* is available upon request of the Commission's staff and is posted on the Commission's website at: [http://www.mhcc.state.md.us/cshbp/\\_cshbp.htm](http://www.mhcc.state.md.us/cshbp/_cshbp.htm).

## **ITEM 7.**

### **PRESENTATION:** Maryland Hospital Obstetric Services: Trends and Utilization Forecast, 2006

Chairman Wilson said that the Commission recently adopted a new state health plan for obstetric services that has significantly changed the way the need projection is applied to the CON review. Patricia Cameron, Chief, Acute and Ambulatory Care Services, presented historical and projected utilization data to support ongoing planning efforts. The report included an inventory of acute hospital obstetric services; population estimates and projections for females of child-bearing age; birth trends and projections; selected birth characteristics and health status indicators; utilization and financing of hospital obstetric services; a description of the methodology; a forecast of obstetric discharges to 2006; detailed tables; and a description of the forecast methodology. Commissioner Row requested that staff send the report to Med-Chi for analysis and comment. Chairman Wilson thanked Ms. Cameron for her report.

## ITEM 8.

### **PRESENTATION AND RELEASE FOR INFORMAL PUBLIC COMMENT:** Maryland Acute Care Bed Need Projections (Medical-Surgical and Pediatric Services): 2007

Chairman Wilson announced the next agenda item. Paul Parker, Health Policy Analyst, presented a draft set of acute bed need projections for medical-surgical and pediatric services for 2007. The Commission staff prepared projections of the need for medical/surgical/gynecological/addictions (MSGA) beds and for pediatric beds using the methodologies adopted in regulation at COMAR 20.24.10, the Acute Inpatient Services Chapter of the State Health Plan. Consistent with the range of discharge rate and average length of stay “targets” which are used in these methodologies, a range of forecast scenarios was developed. Staff intends to update the bed need projections on an annual basis for the foreseeable future, in light of the uncertainty in mid to long-term trends in bed use created by recent changes in direction of discharge rates and the likelihood that some hospital bed expansion projects will be filed for CON review. Following discussion, the report was released for informal public comment. Copies are available, upon request, from the Commission’s offices and on the Commission’s website at:

<http://www.mhcc.state.md.us/resources/reports/acutehospital/acute.htm>.

## ITEM 9.

### **PRESENTATION:** *Spotlight on Maryland – Prescription Drugs*

Chairman Wilson said that increased spending on prescription drugs is a major contributor to the increases we are now seeing in health insurance premiums. Two years ago, the Commission began requiring payers to submit information regarding prescription drug utilization to the Medical Care Data Base (MCDB). The Commission has collected sufficient data to begin examining overall utilization, as well as the use of several heavily advertised patented drugs. Linda Bartnyska, Chief, Cost and Quality Analysis, presented some of the findings from this analysis. She thanked Larry Monroe, Irv Gutin, and Leslie LaBrecque of the Commission’s Data Systems and Analysis staff for their contributions to the report. Consumer spending on prescription drugs increased retail sales from 1999 to 2000, however, per capita sales for Maryland and the District of Columbia (MD+DC) showed average growth. Compared to the United States overall, the MD+DC had higher average prescription drug prices in 1999, but fewer prescriptions per person. There was an increase of 14% in per recipient utilization among non-elderly in the MCDB with at least one prescription. New, higher-priced drugs account for most of the increased sales. Generics cost 30-70% less than branded drugs, and could reduce total expenditures, however, drug companies keep generics out of the marketplace by working loopholes within the system, such as patent stacking. Many patients fail to use generic drugs that are available. Higher prescription drug utilization is driven, in part, by advertising to physicians and consumers. Newly proposed coverage plans such as annual caps on drug coverage, a fixed monthly benefit, a pharmacy deductible, and cost-shifting to consumers through higher and tiered copayments for more expensive drugs resulted in diminished coverage in the private sector. Medicare beneficiaries coverage options have been shrinking due to retirees losing drug coverage from former employers and HMOs reducing drug benefits and increasing premiums and copays. Further, there has been increased financial pressure on Medicaid programs. State governments are forming drug purchasing pools to maximize discounts. Proposed cost control measures include copayments, limits on the number of prescriptions per enrollee, substitution of generics for brand-name drugs, and reducing reimbursement rates to pharmacies.

**ITEM 10.**

**Hearing and Meeting Schedule**

Chairman Wilson announced that the Commission meeting scheduled for August 15, 2002 had been cancelled. The Hearing and Meetings Schedule was available at the documents table, as well as on the Commission's website. The next scheduled meeting of the Maryland Health Care Commission will be on Thursday, July 18, 2002 at 4201 Patterson Avenue, Rooms 108-109, in Baltimore, Maryland at 1:00 p.m.

**ITEM 11.**

**Adjournment**

There being no further business, the meeting was adjourned at 3:34 p.m. upon motion of Commissioner Crofoot, which was seconded by Vice Chairman Malouf, and unanimously approved by the Commissioners.